

APPEAL NO. 041410
FILED JULY 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2004. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury; (2) the date of injury (DOI) was _____; (3) the respondent/cross-appellant (carrier) is not relieved from liability under Section 409.002, because the claimant timely notified her employer of an injury in accordance with Section 409.001; and (4) the claimant does not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds. The carrier urges affirmance of the injury and disability determinations but cross-appeals the DOI and notice determinations on sufficiency of the evidence grounds.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Notwithstanding the above, the claimant requests reversal of the hearing officer's decision for the development and presentation of additional evidence on her behalf. The record reflects that the claimant was given sufficient opportunity to meet her burden of proof on the disputed issues. Accordingly, we decline to grant the claimant a "second bite at the apple."

Although not raised by the parties, we reform Conclusion of Law No. 4, consistent with the hearing officer's findings of fact, as follows: "Claimant did not sustain a repetitive trauma injury *with a date of injury of* _____."

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge